

1 KEKER & VAN NEST, LLP
JOHN W. KEKER - #49092
2 HENRY C. BUNSOW - #60707
JON B. STREETER - #101970
3 MICHAEL H. PAGE - #154913
RAGESH K. TANGRI - #159477
4 710 Sansome Street
San Francisco, CA 94111-1704
5 Telephone: (415) 391-5400
Facsimile: (415) 397-7188

6 FINNEGAN, HENDERSON, FARABOW,
7 GARRETT & DUNNER, LLP
CHRISTOPHER P. ISAAC
8 1300 I Street, N.W.
Washington, D.C. 20005-3314
9 Telephone: (202) 408-4000
Facsimile: (202) 408-4400

10 Attorneys for Plaintiff
11 INTERTRUST TECHNOLOGIES CORPORATION

12
13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 INTERTRUST TECHNOLOGIES
CORPORATION,
18 a Delaware corporation,

19 Plaintiff,

20 v.

21 MICROSOFT CORPORATION, a
Washington corporation,

22 Defendant.
23
24

Case No. C 01 1640 JL

**FIRST AMENDED COMPLAINT FOR
INFRINGEMENT OF U.S. PATENT NOS.
6,185,683 B1 AND 6,253,193 B1**

DEMAND FOR JURY TRIAL

25 Plaintiff INTERTRUST TECHNOLOGIES CORPORATION (hereafter "InterTrust")
26 hereby complains of Defendant MICROSOFT CORPORATION (hereafter "Microsoft"), and
27 alleges as follows:
28

FILED

JUN 26 2001

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

JURISDICTION AND VENUE

1
2 1. This action for patent infringement arises under the patent laws of the United States,
3 Title 35, United States Code, more particularly 35 U.S.C. §§ 271 and 281.

4 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

THE PARTIES

6
7 4. Plaintiff InterTrust is a Delaware corporation with its principal place of business
8 at 4750 Patrick Henry Drive, Santa Clara, California.

9 5. InterTrust is informed and believes, and on that basis alleges, that Defendant
10 Microsoft is a Washington Corporation with its principal place of business at One Microsoft
11 Way, Redmond, Washington.

12 6. InterTrust is informed and believes, and on that basis alleges, that Defendant
13 Microsoft does business in this judicial district and has committed and is continuing to commit
14 acts of infringement in this judicial district.

15 7. InterTrust is the owner of United States Patent No. 6,185,683 B1, entitled
16 "Trusted and secure techniques, systems and methods for item delivery and execution" ("the
17 '683 patent"), duly and lawfully issued on February 6, 2001. A copy of the '683 patent is
18 attached hereto as Exhibit A.

19 8. InterTrust is the owner of United States Patent No. 6,253,193 B1, entitled
20 "Systems and methods for secure transaction management and electronic rights protection" ("the
21 '193 patent"), duly and lawfully issued on June 26, 2001. A copy of the '193 patent is attached
22 hereto as Exhibit B.

FIRST CLAIM FOR RELIEF

23
24 9. InterTrust hereby incorporates by reference paragraphs 1-7 as if restated herein.

25 10. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

26 11. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
27 been and is infringing the '683 patent under § 271(a) by making, using, selling, and offering for
28 sale digital rights management software incorporating inventions claimed in the '683 patent.

1 InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
2 infringement of the '683 patent under §271(a) will continue unless enjoined by this Court.

3 12. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
4 been and is knowingly and intentionally inducing others to infringe directly the '683 patent under
5 § 271(a), thereby inducing infringement of the '683 patent under § 271(b). InterTrust is further
6 informed and believes, and on that basis alleges, that Microsoft's infringement of the '683 patent
7 under §271(b) will continue unless enjoined by this Court.

8 13. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is contributorily infringing the '683 patent under § 271(c) by providing digital rights
10 management software and related functions especially made or especially adapted for infringing
11 use and not staple articles or commodities of commerce suitable for substantial noninfringing
12 use. InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
13 infringement of the '683 patent under §271(c) will continue unless enjoined by this Court.

14 14. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
15 willfully infringing the '683 patent in the manner described above in paragraphs 11 through 13,
16 and will continue to do so unless enjoined by this Court.

17 15. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
18 derived and received, and will continue to derive and receive from the aforesaid acts of
19 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
20 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
21 been, and will continue to be, irreparably harmed.

22 **SECOND CLAIM FOR RELIEF**

23 16. InterTrust hereby incorporates by reference paragraphs 1-6 and 8 as if restated
24 herein.

25 17. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

26 18. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
27 been and is infringing the '193 patent under § 271(a) by making, using, selling, and offering for
28 sale digital rights management software incorporating inventions claimed in the '193 patent.

1 InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
2 infringement of the '193 patent under §271(a) will continue unless enjoined by this Court.

3 19. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
4 been and is knowingly and intentionally inducing others to infringe directly the '193 patent under
5 § 271(a), thereby inducing infringement of the '193 patent under § 271(b). InterTrust is further
6 informed and believes, and on that basis alleges, that Microsoft's infringement of the '193 patent
7 under §271(b) will continue unless enjoined by this Court.

8 20. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is contributorily infringing the '193 patent under § 271(c) by providing digital rights
10 management software and related functions especially made or especially adapted for infringing
11 use and not staple articles or commodities of commerce suitable for substantial noninfringing
12 use. InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
13 infringement of the '193 patent under §271(c) will continue unless enjoined by this Court.

14 21. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
15 willfully infringing the '193 patent in the manner described above in paragraphs 18 through 20,
16 and will continue to do so unless enjoined by this Court.

17 22. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
18 derived and received, and will continue to derive and receive from the aforesaid acts of
19 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
20 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
21 been, and will continue to be, irreparably harmed.

22 PRAYER FOR RELIEF

23 WHEREFORE, InterTrust prays for relief as follows:

24 A. That Microsoft be adjudged to have infringed the '683 patent under 35 U.S.C. §
25 271(a);

26 B. That Microsoft be adjudged to have infringed the '683 patent under 35 U.S.C. §
27 271(b) by inducing others to infringe directly the '683 patent under 35 U.S.C. § 271(a);

28 C. That Microsoft be adjudged to have contributorily infringed the '683 patent under

1 35 U.S.C. § 271(c);

2 D. That Microsoft be adjudged to have willfully infringed the '683 patent under 35
3 U.S.C. §§ 271(a), (b), and (c);

4 E. That Microsoft, its officers, agents, servants, employees and attorneys, and those
5 persons in active concert or participation with them be preliminarily and permanently restrained
6 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '683 patent;

7 F. That Microsoft be adjudged to have infringed the '193 patent under 35 U.S.C. §
8 271(a);

9 G. That Microsoft be adjudged to have infringed the '193 patent under 35 U.S.C. §
10 271(b) by inducing others to infringe directly the '193 patent under 35 U.S.C. § 271(a);

11 H. That Microsoft be adjudged to have contributorily infringed the '193 patent under
12 35 U.S.C. § 271(c);

13 I. That Microsoft be adjudged to have willfully infringed the '193 patent under 35
14 U.S.C. §§ 271(a), (b), and (c);

15 J. That Microsoft, its officers, agents, servants, employees and attorneys, and those
16 persons in active concert or participation with them be preliminarily and permanently restrained
17 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '193 patent;

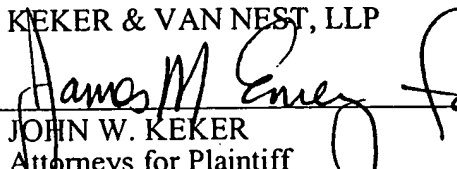
18 K. That this Court award damages to compensate InterTrust for Microsoft's
19 infringement, as well as enhanced damages, pursuant to 35 U.S.C. § 284;

20 L. That this Court adjudge this case to be exceptional and award reasonable
21 attorney's fees to InterTrust pursuant to 35 U.S.C. § 285;

22 M. That this Court assess pre-judgment and post-judgment interest and costs against
23 Microsoft, and award such interest and costs to InterTrust, pursuant to 35 U.S.C. § 284; and

24 N. That InterTrust have such other and further relief as the Court may deem proper.

25 Dated: June 26, 2001

26 KEKER & VAN NEST, LLP
By: 
27 JOHN W. KEKER
Attorneys for Plaintiff
28 INTERTRUST TECHNOLOGIES
CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

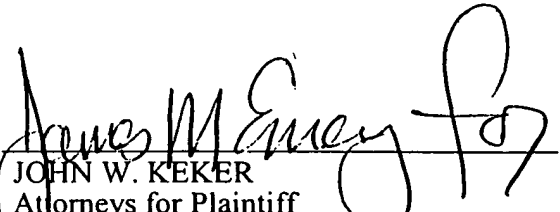
DEMAND FOR JURY TRIAL

Plaintiff InterTrust hereby demands a trial by jury as to all issues triable by jury,
specifically including, but not limited to, the issue of infringement of United States Patent No.
6,185,683 B1 and the issue of infringement of United States Patent No. 6,253,193 B1.

Dated: June 26, 2001

KEKER & VAN NEST, LLP

By:


JOHN W. KEKER
Attorneys for Plaintiff
INTERTRUST TECHNOLOGIES
CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On June 26, 2001, I served the following document(s):

**FIRST AMENDED COMPLAINT FOR INFRINGEMENT OF
U.S. PATENT NOS. 6,185,683 B1 AND 6,253,193 B1**

DEMAND FOR JURY TRIAL

XX by regular UNITED STATES MAIL by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

Select by COURIER, by placing a true and correct copy in a sealed envelope addressed as shown below, and dispatching a messenger from [MESSENGER COMPANY], whose address is [MESSENGER COMPANY ADDRESS], with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving a true copy thereof with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.

via Courier

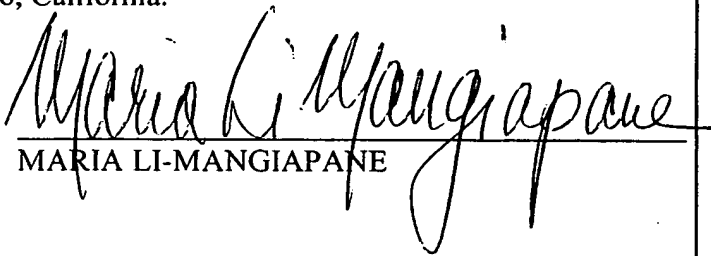
Eric L. Wesenberg, Esq.
Mark R. Weinstein, Esq.
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park CA 94025
Fax: 650-614-74401

via U.S. Mail

John D. Vandenberg, Esq.
James E. Geringer, Esq.
Klarquist Sparkman Campbell, et al.
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland OR 97204
Fax: 503-228-9446

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 26, 2001, at San Francisco, California.


MARIA LI-MANGIAPANE